IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3940 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANANDBHAI KARSHANBHAI MAKWANA - Petitioner(s)
Versus
GUJARAT STATE ROAD TRANSPORT CORPORATION &2-Respondent(s)

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Appearance :

MR GAURANG H BHATT for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR YOGESH S LAKHANI for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 07/09/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner, a Bus conductor serving with the respondent has challenged the legality and validity of the order

passed- by the respondents in dismissing the petitioner from services as Bus conductor vide order dated 31.5.1996.

2. The petitioner was serving as 'Bus Conductor' with the respondent, Gujarat State Road Transport Corporation. On 25.5.1989, ST Bus No. 8214 was hired by a private party for trip from Dhoraji to Vachhara and the petitioner was on duty in the said bus on that day. The maximum capacity of the said bus was 80 passengers, however when the Checking Squad checked the said but it was found that there were in all 85 ½ passengers in the said bus which was contrary to rules and a report in this behalf against the petitioner was prepared and submitted to the competent authority by the said checking party. On the basis of the said report, chargesheet was issued alleging therein that the petitioner with a view to cause monetary loss to the Corporation by allowing 5 ½ excessive passengers in the said

bus committed the breach of relevant administrative circulars; committed negligence in the duty; exhibited dishonest intention for wrongful gain; and has committed breach of the provisions of Section 4, 12-B, 22 and 27 of the Schedule 'A' to the Discipline and Appeal Rules for the Corporation employees. The petitioner filed Regular Civil Suit challenging the said chargesheet. The said suit came to be dismissed against which appeal came to be preferred before the District Judge, Rajkot and the same also came to be dismissed by order dated 17.7.1993, however the S.T. Corporation was granted liberty to proceed with the enquiry/chargesheet, and the Corporation was directed not to implement the order of punishment if any made against the petitioner for a period of 15 days after its communication to the petitioner by RPAD. Thereafter on the basis of the aforesaid chargesheet a notice came to be issued upon the petitioner dated 11.8.1989 and the petitioner was

directed to show cause why he should not be dismissed from services, and thereafter by impugned order the petitioner came to be dismissed from service on 31.5.1996.

3. It is the contention on behalf of the petitioner that looking to the gravity of default and when the requisite charges for 5 ½ passengers were recovered from the deposited amount the punishment of dismissal from service is highly excessive and resulting into economic death of the petitioner along with his family. It is further submitted that the petitioner is ready and willing and is also prepared to accept any reasonable and suitable penalty which may be imposed by this Court. It is further submitted that the petitioner was not provided with any adequate opportunity to defend by providing to crossexamine the witnesses, the passengers and the persons whose statements were recorded, nor was given copy of the relevant documents which

were used against him. It is further submitted that the dismissal order dated 31.5.1996 is a non-speaking order and is passed in a mechanical manner without proper application of mind by the concerned authorities.

4. The petition is opposed by the respondents, however, no affidavit-in-reply has been filed on behalf of the respondents. It is submitted by the learned advocate appearing on behalf of the respondents that earlier also there were 16 defaults in the credit of the petitioner and as there was negligence on the part of the petitioner in allowing 5 ½ passengers in excess to travel considering his past conduct,the order of dismissal is just and proper.

5. At the outset, it is required to be noted that, while admitting the present Special Civil Application, this Court granted ad-interim relief in terms of paragraph 16(b), and pursuant to the

said ad-interim order the petitioner is continued in service. It is also required to be noted that the petitioner is due to retire after 1 ½ years. It is to be noted that the learned counsel appearing on behalf of the petitioner has not challenged the departmental enquiry seriously. In the facts and circumstances of the case, looking to the gravity of the default and in absence of any further material showing that for a monetary benefit the petitioner allowed 5 ½ passengers to travel in excess, at the most it can be said to be a case of negligence where the punishment of dismissal is too harsh and therefore this Court is required to consider the aspect of punishment only. Now, considering the facts of the case, it appears that nothing has been brought on record, i.e., any finding against the petitioner with regard to misappropriation and/or allegation against the petitioner and/or the charges of allowing 5 ½ more passengers to travel in the bus beyond its capacity of 80

levelled against the petitioner. On overall consideration of the facts of the case, looking to the breach committed by the petitioner the order of dismissal being too harsh, the same came to be stayed by this Court on 14.6.1996 which is in force till date. Now, considering the fact that the petitioner is due for retirement after 1 ½ years and the order of dismissal against the petitioner seems to be very harsh and too excessive looking to the default committed by the petitioner, it appears to the Court that it will be in the fitness of things if 3 increments with future permanent effect are withhold by way of punishment. The learned counsel appearing on behalf of the petitioner concedes to such punishment. It is required to be noted that, it is the contention on behalf of the respondents that there were 16 defaults committed by the petitioner in the past. However, nothing has been brought on record by way of any Affidavit-in-Reply. There might be 16 defaults committed by

the petitioner as alleged, however, so far as the present case is concerned, for the reasons stated above and considering the gravity of default and/or negligence on the part of the petitioner in allowing 5 ½ passengers to travel, in absence of any material on record to show that it was a case of misappropriation and/or the petitioner attempted to gain monetary benefit by permitting 5 ½ passengers to travel in excess of the permissible limit, the punishment of dismissal is excessive and too harsh.

6. For the reasons stated above, the petition succeeds in part. The order passed by the respondents in dismissing the petitioner from service is hereby quashed and set aside. Instead of dismissal, the punishment of withholding of 3 increments with future permanent effect is

imposed. Rule is made absolute to the aforesaid

extent with no order as to costs.

[M.R. Shah, J.]

RMR.